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January 26, 2015

Bridget Bohac
Office of the Chief Clerk
TCEQ
PO Box 13087
Austin TX 78711

Re: SAWS' Reply to Executive Director's and Office of Public Interest Counsel's Responses to Hearing Requests; TCEQ Docket No. 2014-1658-WR

Dear Ms. Bohac:

Attached for filing is SAWS' Reply to Executive Director's and Office of Public Interest Counsel's Responses to Hearing Requests regarding the referenced matter. Today copies of that pleading are being filed electronically and seven copies are being mailed to your office. Additionally copies are being served on the persons identified on the service list. Please do not hesitate in contacting me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Mathews", with a stylized flourish at the end.

Jim Mathews

cc Steve Kosub with enclosures

TCEQ DOCKET NO. 2014-1658-WR

**APPLICATION BY GUADALUPE- §
BLANCO RIVER AUTHORITY FOR §
WATER RIGHTS PERMIT NO. 12378 §**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**SAN ANTONIO WATER SYSTEM'S REPLY TO EXECUTIVE DIRECTOR'S AND
OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSES TO HEARING
REQUESTS**

The San Antonio Water System (SAWS) submits this Reply to the Executive Director's and Office of Public Interest Counsel's Responses to Hearing Requests in the referenced matter.

I. Procedural Background

The Guadalupe-Blanco River Authority (GBRA) filed an application for a water use permit to divert and use 75,000 acre feet of state water per year from the Guadalupe River in Gonzalez County and to construct off channel reservoirs with a combined storage capacity of 125,000 acre feet to store the diverted water. Newspaper notice of the application was published between July 31 and August 6, 2013. By letter filed August 30, 2013 SAWS timely requested a contested case hearing on GBRA's application. The Executive Director and Office of Public Interest Counsel filed responses to SAWS' request recommending denial. Significantly, the applicant for the permit, GBRA, did not object to SAWS' hearing request, filing no response.

II. SAWS' Justiciable Interest

SAWS is an "affected person" as defined in Texas Water Code Section 5.115 and Commission rule 30 TAC §55.256 because SAWS has a personal justiciable interest affected by GBRA's application. SAWS annually produces in excess of 100,000 acre feet of groundwater-based wastewater effluent treated to type one reclaimed water standards. SAWS is committed to maintaining ownership and control over this valuable private property resource. To further this goal SAWS has: (1) developed and implemented a "purple pipe" distribution system capable of directly reusing up to 35,000 acre feet per year of its type one reclaimed water, (2) contracted with City Public Services Energy (CPS) to deliver up to 50,000 acre feet of treated effluent annually for use as cooling water for CPS' electric generating units by either bed and banks conveyance or a future pipeline, and (3) filed with the Texas Commission on Environmental

Quality (TCEQ) on December 30, 2013 an application for a bed and banks authorization pursuant to Texas Water Code § 11.042(b) to authorize indirect reuse of all of SAWS' currently permitted, but uncommitted, groundwater-based effluent return flows. Currently some of SAWS' uncommitted wastewater effluent is discharged into the San Antonio River and flows past its confluence with the Guadalupe River to the bays and estuaries on the Texas Coast. This bed and banks application requests a single diversion point on the Guadalupe River downstream of the diversion point for various run-of-river water rights held by GBRA near the confluence of the Guadalupe River with the Calhoun Canal. Because GBRA's permit application raises issues about the amount of water available for appropriation and needed to satisfy senior water rights and environmental flow needs in the Guadalupe River and associated bays and estuaries SAWS' interest in protecting and using its groundwater-based effluent return flows is germane to GBRA's application.

III Argument and Authorities

In order to establish standing necessary to obtain a contested case hearing, SAWS need only show that it has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the pending GBRA application. Tex. Water Code §5.115, 30 TAC §55.256. This standard does not require a showing that the party will ultimately prevail on the merits, it simply requires a showing that the party will *potentially* suffer harm or have a justiciable interest that will be affected. *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Environmental Justice*, 962 S.W.2d 288, 289 (Tex. App.—Austin 1998, pet. denied). The right to participate in administrative proceedings is construed liberally to encourage varying points of view. *Texas Rivers Protection Association v. Texas Natural Resource Conservation Commission*, 910 S.W. 2d 147, 151 (Tex. App-Austin 1995, writ denied).

A. Reply to the Executive Director's Response

The Executive Director argues that SAWS failed to show that it was an affected person because: (1) SAWS did not show that it holds water rights in the Guadalupe River Basin, (2) SAWS' pending application for a bed and banks reuse authorization has not yet been granted, and (3) SAWS' groundwater-based effluent was not included in the model that the Executive Director's Staff used to determine whether GBRA's permit would impair fresh water inflows.

The Executive Director further argues that granting GBRA's permit application will not have the potential to shift to SAWS or other parties the burden of meeting the environmental flow needs of the federally endangered Whooping Cranes because the Fifth Circuit Court of Appeals has reversed the U.S. District Court's judgment granting injunctive relief in *Texas Aransas Project v. Shaw*. The Executive Director's arguments are flawed.

SAWS' interests that are affected by GBRA's application relate to SAWS' property interests in its privately owned groundwater-based return flows, not to surface water rights in the Guadalupe River basin. Texas Water Code § 11.042(b) recognizes the right of a discharger of groundwater-based return flows, such as SAWS, to retain ownership of the groundwater-based return flows after they are discharged into a state water course. This right was recognized by the Commission when it entered an interim order in one of the first applications processed under 11.042(b).¹ The fact that the SAWS application has not yet been granted does not diminish the right afforded by state law to seek and obtain the authorization needed to retain ownership after discharge into a state watercourse nor does it allow another party to appropriate those future return flows through the process of obtaining a state water rights permit.

The Executive Director's assertion that SAWS' groundwater-based effluent was not included in the model that staff used to determine if GBRA's permit would impair freshwater inflows into the bays and estuaries is comforting, but not controlling of the scope of issues that may be germane to GBRA's permit. No party objected to the standing of Texas Parks and Wildlife Department and the Texas Chapter of the Coastal Conservation Association. Both of those parties identified justiciable interests related to GBRA's application concerning the freshwater inflows to bays and estuaries. Accordingly the issue of freshwater inflows and, by necessary implication, the modeling to determine water available to satisfy those needs is not only germane, but probable for this hearing.

Even if the Executive Director maintains the position throughout this hearing that SAWS' return flows should not be included in the water availability modeling for GBRA's application, other parties would not be precluded from asserting otherwise. Recent actions by GBRA demonstrate its willingness to do so. In response to SAWS' application for a section 11.042(b)

¹ "The Commission determines as a matter of law that the Cities applications do not involve state water based on *Section 11.042(b) of the Water Code, which provides the criteria for the owner of privately owned groundwater to retain ownership of groundwater after discharge into a state watercourse*". Interim order in City of Bryan and City of College Station Application Nos. 5912 and 5913. See Attachment 1.

bed and banks authorization, GBRA filed a bond validation lawsuit in which it makes broad and unsupported assertions concerning its “rights” to SAWS’ return flows². Specific to GBRA’s pending permit application that seeks a new appropriation and diversion in Gonzales County, GBRA asserts that it “would be prevented from diverting some Guadalupe River flows *to which it would otherwise be entitled*” if SAWS’ bed and banks application seeking to reuse its groundwater-based return flows is granted.³

The Executive Director’s assertion that the recent decision of the Fifth Circuit Court of Appeals puts an end to the potential that granting GBRA’s permit may shift to SAWS or other parties the burden of meeting the environmental flow needs of the federally endangered Whooping Cranes ignores the fact that the jurisdiction of the United States Supreme Court to review that decision by writ of certiorari may be invoked until ninety days after entry of judgment. In the Whooping Crane case the judgment of the Fifth Circuit was entered on December 15, 2014, and the deadline for the filing of a petition for certiorari extends to mid-March.

Accordingly, SAWS’ interests in its return flows and in its statutory right to retain ownership of its groundwater based return flows through a Water Code Section 11.042(b) bed and banks application could potentially be affected by GBRA’s application and provide a basis for SAWS standing in this case.

B. Reply to Response of Office of Public Interest Counsel (OPIC).

OPIC asserts that SAWS’ interests in GBRA’s application are theoretical based on the mistaken belief that SAWS does not have a current application for a bed and banks authorization before the Commission. As noted above, SAWS filed its application on December 30, 2013 in order to obtain the authorization required to retain its ownership interest in these return flows. Nothing in the water code authorizes a party such as GBRA to undermine the right of a discharger of groundwater-based return flows to seek and obtain authorization to reuse those flows pursuant to a Section 11.042(b) authorization.

² *Ex Parte Guadalupe-Blanco River Authority*. In response to pleas to the jurisdiction filed by TCEQ, SAWS and other intervenors the Travis County District Court dismissed this suit. However that order of dismissal remains pending on appeal. See Attachment 2

³ *Ex Parte Guadalupe Blanco River Authority* at §63.

OPIC is also incorrect in asserting that SAWS lacks a justiciable interest related to its claim that granting GBRA's permit may shift the burden of meeting the environmental flow needs of the federally protected Whooping Cranes. This claim is not theoretical and thus not ripe as asserted by OPIC. OPIC itself has recommended that the hearing request of Texas Aransas Project (TAP), the Plaintiff in the *TAP v. Shaw* case, be granted based on TAP's concerns about impacts of the permit on freshwater inflows to the bays and estuaries. Because SAWS' groundwater-based return flows constitute one of the sources of those return flows, SAWS has a justiciable interest in GBRA's application. Moreover, as noted above, the *TAP v. Shaw* case cannot be considered fully resolved at this point because TAP may yet invoke the jurisdiction of the Supreme Court through writ of certiorari.

For all the foregoing reasons, SAWS requests that the Commission grant its request for a contested case hearing.

Respectfully submitted,

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By: 
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ATTORNEYS FOR SAWS

CERTIFICATE OF SERVICE

I hereby certify that on this the 26th day of January, 2015, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.


Jim Mathews

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Attachment 1

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS

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

LaDonna Castanuela DEC 20 2006

LaDonna Castanuela, Office Clerk
Texas Commission on Environmental Quality

AN INTERIM ORDER

concerning the Motion to Overturn filed by the City of Bryan and the City of College Station regarding the Executive Director's decisions to return Application Nos. 5912 and 5913 pursuant to 30 Texas Administrative Code Section 281.18 without prejudice to their re-submission; TCEQ Docket Nos. 2006-1832-WR and 2006-1831-WR..

On December 13, 2006, the Texas Commission on Environmental Quality (the "Commission") considered during its open meeting the Motion to Overturn (the "Motion") filed by the City of Bryan and the City of College Station (Cities) requesting the Commission overturn the Executive Director's September 21, 2006, decisions to return Application Nos. 5912 and 5913 pursuant to 30 Texas Administrative Code Section 281.18 without prejudice to their re-submission. In his letters dated September 21, 2006, the Executive Director stated that he was returning the applications because the Cities had not submitted certain specific information with regard to quantified targets for water savings, including goals for water loss programs and municipal use, and evidence indicating official adoption of water conservation plans that included these specified minimum requirements. The Commission also considered all related filings, the oral argument of the Cities, the Executive Director, and the Office of Public Interest Counsel, and answers to the Commission's questions during the public meeting

After such consideration and subsequent deliberation in open meeting, the Commission determined that it has the jurisdiction and authority to act on the Cities' request to reverse the Executive Director's decisions that the Cities' applications were not administratively complete under the general powers in Chapter 5 of the Water Code, and in particular, under Section 5.221 of the Water Code. The Commission also determined as a matter of law with regard to bed and banks authorization applications that request authorization to divert and reuse return flows derived exclusively from privately owned groundwater that, based on Water Code Section 11.042(b), such applications do not involve state water.

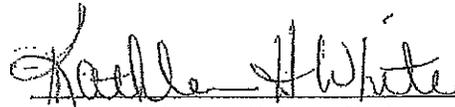
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Commission has jurisdiction under the general powers in Chapter 5 of the Water Code, particularly, Section 5.221 of Chapter 5, to consider and act on the Cities' Motion to Overturn;
2. The Commission determines as a matter of law that the Cities' applications do not involve state water based on Section 11.042(b) of the Water Code, which provides the criteria for the owner of privately owned groundwater to retain ownership of groundwater after discharge into a state watercourse;
3. The Executive Director is directed to process the Cities' applications solely under Section 11.042(b) and the Commission's bed and banks authorization rules and not under statutes and rules applicable to state water;
4. The Cities' applications are remanded to the Executive Director for administrative and technical review; and

5. This Order is confined to bed and banks authorization applications that involve exclusively groundwater-based return flows.

Issue Date: DEC 20 2006

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Kathleen Hartnett White, Chairman

Attachment 2

NO. D-1-GN-14-001198

EX PARTE

GUADALUPE-BLANCO
RIVER AUTHORITY

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

261ST
____ JUDICIAL DISTRICT

ORIGINAL PETITION FOR EXPEDITED DECLARATORY JUDGMENT

Guadalupe-Blanco River Authority (**GBRA**) files this original petition, seeking an expedited declaratory judgment pursuant to Chapter 1205 of the Texas Government Code (the **Expedited Declaratory Judgment Act**).

INTRODUCTION

1. GBRA brings this expedited declaratory judgment action to clear the way for a much-needed water project in the Lower Guadalupe River Basin (the **Lower Basin Storage Project** or the **Project**) and the \$100,000,000 in revenue bonds needed to finance the Project (the **Bonds**). A closely watched part of the State’s water planning process since 2009 and approved under the 2012 State Water Plan, the Project promises to significantly increase GBRA’s **firm** water supplies for municipalities, industries, and other users throughout GBRA’s ten-county statutory district, including the fast-growing I-35 corridor in Hays and Comal Counties.

2. But with launch in sight, San Antonio Water Systems (**SAWS**) filed an insupportable application with the Texas Commission on Environmental Quality (**TCEQ**) that would (by some measures) cut in half the water available for the Project during dry periods – times when the water is most needed – and, with it, much of the pledge of “revenue, receipts, or property to secure the public securities.” TEX. GOV’T CODE § 1205.021(2)(F). As will be demonstrated below, SAWS’s application violates two express restrictions in the Edwards Aquifer Authority Act (the **EAA Act**).

3. As authorized by Section 1205.021 of the Expedited Declaratory Judgment Act, GBRA seeks a declaration that, among other things, will remove the cloud over the Bonds and the Project that SAWS has created. GBRA seeks a declaration that (i) it has the authority to issue the Bonds, (ii) each public security authorization relating to the Bonds is legal and valid, (iii) each proposed expenditure of money relating to the Bonds is legal and valid, and (iv) the Bonds themselves are legal and valid.

4. GBRA also brings this expedited declaratory judgment action to protect other revenue bonds that GBRA has previously issued or may issue in the future that are affected by SAWS' actions (**Other Bonds**). The Other Bonds include, but are not limited to, revenue bonds that GBRA has previously issued for projects to divert and convey raw water supplied from storage in Canyon Reservoir under the water right for Canyon Reservoir owned by GBRA, treat such water, and convey and deliver such treated water. One such project supplies treated Canyon Reservoir water to the City of San Marcos and other municipalities and other users in the I-35 corridor in Hays County. Another project supplies treated Canyon Reservoir water to municipalities and other users in western Comal County, as well as to the City of San Antonio itself in Bexar County. SAWS's assertion of rights to state-owned water flowing in the Guadalupe River and its tributaries creates a cloud over such Other Bonds and such projects as well.

PARTIES AND PROCEDURE

5. **GBRA.** GBRA is a governmental agency and body politic and corporate, created in 1933 by special act of the Legislature for the purposes of Section 59 of Article 16 of the Constitution of the State of Texas, including (i) the control, storing, preservation, and distribution of storm and flood waters, the waters of rivers and streams, including the Guadalupe and Blanco Rivers and their tributaries, for irrigation, power, and all other useful purposes, (ii) the reclamation and irrigation of arid, semi-arid and other lands needing irrigation, (iii) the reclamation and drainage

of overflowed lands, and other lands needing drainage, (iv) the conservation and development of the forests, water and hydro-electric power of the State of Texas, (v) the navigation of inland waters, and (vi) the preservation and conservation of all such natural resources of the State. GBRA stewards the water resources in its ten-county statutory district, which consists of Kendall, Comal, Hays, Caldwell, Guadalupe, Gonzales, DeWitt, Victoria, Calhoun, and Refugio counties. A copy of GBRA's enabling act as it currently exists is attached as **Exhibit C**.

6. **The Attorney General of Texas.** In accordance with Section 1205.042 of the Expedited Declaratory Judgment Act, the Attorney General of Texas must be served with a copy of this petition and the accompanying order at least twenty days before the trial date. The Attorney General of Texas may be served with citation at the following address: Attorney General of Texas, Price Daniel Sr. Building, Post Office Box 12548, Austin, Texas 78711-2548.

7. **Nature of the Proceeding.** This is an *in rem* proceeding. As provided in the Expedited Declaratory Judgment Act, any judgment in this action is binding on all persons who reside in the territory of GBRA, own property located within the boundaries of GBRA, or have or claim a right, title, or interest in any property or money to be affected by the public security authorization or the issuance of the bonds (the **Interested Parties**). See TEX. GOV'T CODE § 1205.023.

8. **Interested Parties.** Subject to the notice requirements imposed by the Expedited Declaratory Judgment Act and described below, all Interested Parties are parties to this action, and the Court's jurisdiction extends to each of them as though they were individually named and personally served in this action. See TEX GOV'T CODE § 1205.044. Any Interested Party may become a named party to this action by filing an answer to this petition on or before the time set for hearing and trial, or thereafter by intervention with leave of court. See TEX GOV'T CODE § 1205.062.

9. **The Required Immediate Order.** Section 1205.041 of the Expedited Declaratory Judgment Act requires the Court, upon receipt of this petition, to “immediately issue” an order, in the form of a notice, directed to all Interested Parties, of their right to appear for trial at 10 o’clock, a.m., on the first Monday after the 20th day after the date of the Court’s order and to show cause why the prayers of this petition should not be granted and why the disputed bonds and their authorization should not be validated and confirmed. A copy of a proposed order is attached as **Exhibit A** and has been presented separately to the Court. A copy of the Expedited Declaratory Judgment Act is **Exhibit B** hereto.

10. **Notice to Interested Parties.** Pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act, the Clerk of the Court is required to publish a “substantial copy of the order” in “a newspaper of general circulation” in Travis County and in the ten counties in GBRA’s territory, which consists of Hays, Comal, Guadalupe, Caldwell, Gonzales, DeWitt, Victoria, Kendall, Refugio, and Calhoun counties. GBRA requests that such notice also be published in “a newspaper of general circulation” in Atascosa, Bexar, Medina, Uvalde, Wilson, Karnes, and Goliad counties. Such notice shall be published “once in each of two consecutive calendar weeks, with the date of the first publication before the 14th day before the trial date.”

11. **Jurisdiction and Venue.** This Court has jurisdiction over the subject matter of this action, over all Interested Parties, and over the Attorney General of Texas pursuant to the Expedited Declaratory Judgment Act. Venue is proper in Travis County pursuant to Section 1205.022 of the Expedited Declaratory Judgment Act.

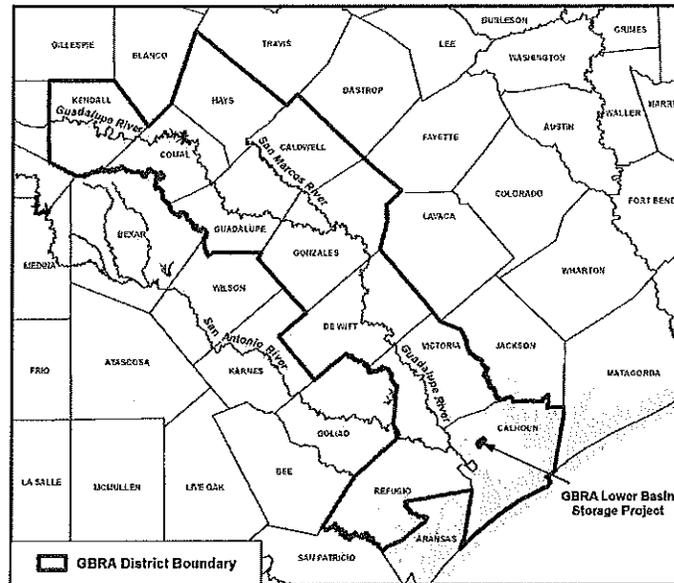
STATEMENT OF THE CASE

A. **An Overview of the Lower Basin Storage Project**

12. The Project relies upon water that GBRA is entitled by law to divert from the Guadalupe River under early-priority water rights issued long ago by the State of Texas and

adjudicated by the courts. These water rights (the *GBRA-Dow Run-of-River Rights*) are owned jointly by GBRA and Union Carbide Corporation, a subsidiary of The Dow Chemical Company (*Dow*). They total 175,501 acre-feet per year and have priority dates ranging from 1941 to 1952.

13. The Lower Basin Storage Project is essentially a modification and extension of GBRA's extensive canal system in Calhoun County (the *GBRA Canal System*), which, as this figure reflects, is located in the southeastern part of GBRA's 10-county district near the coast.



14. By adding off-channel storage, GBRA will significantly increase the amount of water that can be supplied annually on a *firm* basis via the GBRA Canal System using the senior GBRA-Dow Run-of-River Rights.

15. Although the GBRA Canal System is located in Calhoun County at the very bottom of the Guadalupe River Basin, the Lower Basin Storage Project will result in an increase in GBRA's firm water supplies available for use by municipalities, industries, and other users throughout GBRA's ten-county statutory district, including the fast-growing I-35 corridor in Hays and Comal Counties.

B. An Overview of GBRA, “Firm” Water Supplies and the “Drought of Record,” and the Critical Issues in this Case

16. Since GBRA’s creation over 80 years ago, it has focused on economic development and protection of natural resources and the environment in its ten-county statutory district. One of GBRA’s most important functions is to provide adequate water supplies to meet the growing demands of citizens, industries, and businesses within its district.

17. To be adequate, a water supply must be “firm,” meaning that the supply must be reliable each and every day throughout a drought at least as severe as the most-severe drought of record in the region. In Central Texas, that drought is the extreme, ten-year drought that occurred from roughly 1947 to 1956, commonly referred to as the drought of the 1950’s. Since then, every water supply is tested against that drought to determine whether the supply is “firm” today and whether it will remain “firm” for a given number of years into the future.

18. For at least two reasons, it is essential that GBRA accurately project whether its firm water supplies will remain so: (1) municipal and industrial customers need GBRA to commit to supply defined amounts of water on a firm basis under long-term contracts, the terms of which typically extend 30 to 40 years with rights to renew and/or extend; and (2) purchasers of Bonds want assurance that the amounts of water committed by contract to be supplied on a firm basis will continue to be firm throughout that term.

19. The test to determine whether a supply is and likely will remain firm involves complex computer simulation of a reoccurrence of the ten-year drought of the 1950’s. The simulation takes into account changes affecting streamflows that have occurred since the drought of the 1950’s.

20. With respect to the Lower Basin Storage Project, the two most important changes affecting streamflows at the GBRA Canal System’s diversion point on the Guadalupe River are (1) *reductions* in streamflows caused by increased pumping of groundwater from the Edwards Aquifer

by the City of San Antonio and other growing cities in the watersheds of the Guadalupe and San Antonio Rivers (groundwater that is hydrologically connected to the Guadalupe River), and (2) *increases* in streamflows caused by increased discharges of treated wastewater by those same cities.

21. To determine the Lower Basin Storage Project's firm water supply to any point in the future, continued streamflow changes caused by Edwards pumping and treated wastewater discharges must be predicted.

22. The prediction of how much treated wastewater will be discharged in the future by the City of San Antonio and other cities located in the watersheds of the Guadalupe and San Antonio Rivers, together with relevant law regarding those discharges, are front and center before this Court in this proceeding. Before focusing on these critical issues and why it is necessary and proper for the Court to address them in this expedited declaratory judgment action, however, it is necessary to briefly discuss the Edwards Aquifer and its two primary surface outlets, the Comal and San Marcos Springs.

C. An Overview of the Edwards Aquifer and its Two Primary Surface Outlets, the Comal and San Marcos Springs

23. The San Antonio Segment of the Edwards Aquifer (the *Edwards Aquifer* or the *Edwards*) is an underground conduit extending from Kinney County in the west to Hays County in the east. Most of the water in the Edwards comes from surface streams. Unless intercepted by human withdrawals, water in the Edwards discharges naturally at springs, especially Comal Springs and San Marcos Springs.

24. Comal Springs in New Braunfels is the largest spring in Texas and the entire Southwest United States. San Marcos Springs in San Marcos is the second largest spring in Texas.

25. Flows from Comal Springs enter the Guadalupe River at New Braunfels, and flows from San Marcos Springs enter the San Marcos River at San Marcos and then the Guadalupe River at Gonzales, where the San Marcos River flows into the Guadalupe River.

26. The flows from these two Springs make up the lifeblood of the Guadalupe River during droughts, and the primary source of supply of water under the GBRA-Dow Run-of-River Rights. Recent hydrologic studies conclude that, in the absence of pumping from the Edwards by San Antonio and others, the combined flow from Comal Springs and San Marcos Springs would not have dropped below approximately 380 cubic feet per second (cfs) at any time during the drought of the 1950's.

27. Because of pumping from the Edwards by San Antonio and others, Comal Springs dried up for approximately five months in 1956, the worst year of the drought of the 1950's. In that same year, San Marcos Springs dropped to 46 cubic feet per second. In the recorded history of man, the Comal Springs had never before dried up, and the San Marcos Springs had never before dropped to such a low level.

28. Pumping from the Edwards has increased significantly since the 1950's. Studies show that unrestricted pumping at current levels during a repeat of the drought of the 1950's would dry up the Comal Springs for several years, and the San Marcos Springs for a shorter period of time.

D. The EAA Act's Critical Restrictions on Reuse and Place of Use

29. After the drought of the 1950's, there were many efforts to effect meaningful regulation of pumping from the Edwards. For decades, all efforts were unsuccessful. But in 1993, the Legislature passed SB 1477.

30. In SB 1477, the Legislature found the Edwards to be a body of water unlike any other in Texas – “a unique and complex hydrologic system” and “a distinctive natural resource in this state.” To regulate withdrawals and water use, the Legislature created the EAA, a “special regional management district” and provided for “the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.”

31. The Legislature imposed two critical restrictions on Edwards water in SB 1477 that have endured through all of the amendments to the EAA Act.

32. First, the Legislature restricted *reuse*. Section 1.03(19) makes clear that any reuse of Edwards water must occur *before* the unconsumed water returns to a body of state-owned water:

“Reuse” means authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use *and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.* (emphasis added).

33. The second important restriction in the EAA Act limits where Edwards water may be used. Section 1.34(a) of the EAA Act provides that “[w]ater withdrawn from the aquifer must be used *within the boundaries of the authority.*” (emphasis added).

34. With this restriction, the Legislature plainly recognized the significant shortage of firm water within the boundaries of the EAA, as well as the lack of firm supply to San Antonio.

35. Neither the EAA Act’s reuse restriction nor its place-of-use restriction allows exceptions, and the EAA Act does not empower the EAA to grant variances from Sections 1.03(19) and 1.34(a).

E. GBRA’s Bond Resolution and its Determination of Firm Supply from the GBRA Canal System after Construction of the Lower Basin Storage Project

36. On April 16, 2014, the GBRA Board of Directors adopted a Resolution authorizing the issuance of the Bonds. A copy of the Resolution is attached as **Exhibit D** and incorporated herein. *See* TEX. GOV’T CODE § 1205.024 (required pleading contents). Among other things, the Resolution recounts GBRA’s determination “that off-channel reservoir storage should be constructed, in phases, in order to provide a total firm water supply of not less than 100,000 acre-feet per year utilizing the GBRA-Dow Lower Basin Run-of-River Water Rights,” GBRA’s reliance on “hydrologic studies show[ing] that construction and utilization of approximately 12,500 acre-feet of off-channel reservoir storage will provide a total firm water supply of not less than 100,000 acre-

feet per year utilizing the GBRA-Dow Lower Basin Run-of-River Water Rights.” Resolution at 3; *see also id.* at 51 (Section 37 of the Resolution provides that “GBRA hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and GBRA hereby incorporates such recitals as a part of this Resolution.”).

37. To arrive at its determination of the firm supply of water that will be provided under the GBRA-Dow Run-of-River Rights after construction of the Lower Basin Storage Project, GBRA used conservative (low) projections developed in the State’s water planning process of the amount of treated wastewater effluent that will be generated by San Antonio and other cities in the future derived from use of Edwards water within the EAA boundaries, as well as the planning process projections of the amount of treated wastewater that will be taken from the treatment plants and reused within the EAA boundaries. The difference is the amount of effluent projected to be discharged to “a watercourse, lake, or other body of state-owned water,” all of which would become, and remain, state-owned water that is part of the run-of-river flow of the Guadalupe River system.

38. Based on those projections of discharges of treated effluent and conservative (low) springflow assumptions, GBRA determined that the firm supply of water from the GBRA Canal System through the year 2060 under the GBRA-Dow Run-of-River Rights alone will be about 41,500 acre-feet per year. Constructing off-channel storage with a capacity of 12,500 acre-feet will increase that firm supply to approximately 100,500 acre-feet per year, which is approximately 57% of the 175,501 acre-feet-per-year total of the GBRA-Dow Run-of-River Rights.

39. As discussed above, if there were no pumping from the Edwards by San Antonio or anyone else, the combined flow from Comal Springs and San Marcos Springs would not have dropped below approximately 380 cfs at any time during the drought of the 1950’s. With this natural level of springflows, and without any return flows of treated wastewater, the firm supply of

water under the GBRA-Dow Run-of-River Rights alone, without the Lower Basin Storage Project, would be greater than 100,500 acre-feet per year.

40. The estimated cost of the Lower Basin Storage Project with an off-channel storage capacity of 12,500 acre-feet is over \$90,000,000, using 2013 prices.

41. Thus, it will cost GBRA and its customers nearly \$100,000,000 to bring the firm supply under the GBRA-Dow Run-of-River Rights back up to something *less* than the firm supply that would exist if San Antonio and others neither pumped any water from the Edwards nor discharged any treated effluent to the Guadalupe River system.

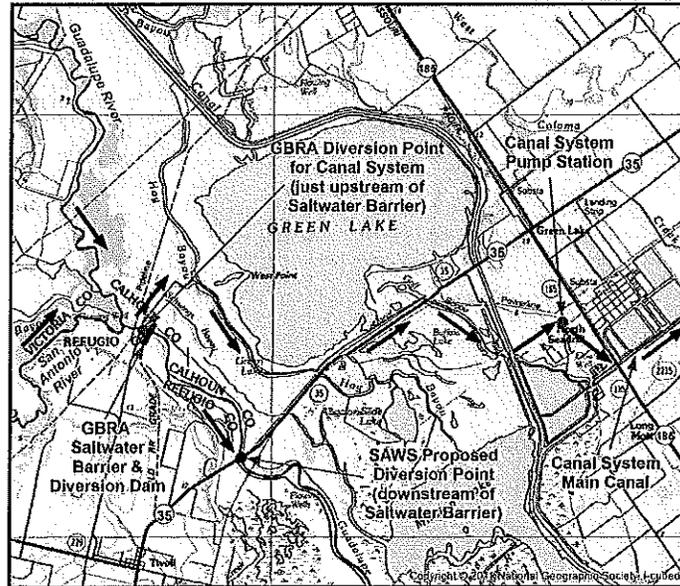
42. The amount of firm water to be sold by GBRA and supplied to Participants pursuant to contracts is the difference between the projected firm supply of 100,500 acre-feet per year and the amount of firm water to be properly allocated to Dow pursuant to its interests in the GBRA-Dow Run-of-River Water Rights and contracts with GBRA.

43. The rate per acre-foot of firm supply charged to Participants to recover the cost of the Lower Basin Storage Project and pay off the Bonds likewise will be based on the difference between the projected firm supply of 100,500 acre-feet per year and the amount of firm water to be properly allocated to Dow pursuant to its interests in the GBRA-Dow Run-of-River Water Rights and contracts with GBRA.

F. SAWS's Cloud over the Bonds and the Lower Basin Storage Project

44. Notwithstanding the reuse restriction clearly set forth in the EAA Act, SAWS has filed at least two applications with the TCEQ seeking authorization to reuse return flows derived from Edwards water *after* the water that remains unconsumed after initial use *is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.*

45. The larger SAWS applications is attached as **Exhibit E**. The smaller application is referenced in the larger application. As the figure reflects, SAWS's proposed diversion point is on the Guadalupe River, just downstream of GBRA's long-existing diversion point for the GBRA Canal System and the Lower Basin Storage Project.



46. By its applications, SAWS seeks to bypass entirely the need to obtain a water appropriation permit from the TCEQ pursuant to Section 11.121 of the Water Code, and the priority system applicable to all such rights to use state-owned water. SAWS effectively seeks a back-door, first-priority right to divert the state-owned flows of the Guadalupe River that is senior to all water rights.

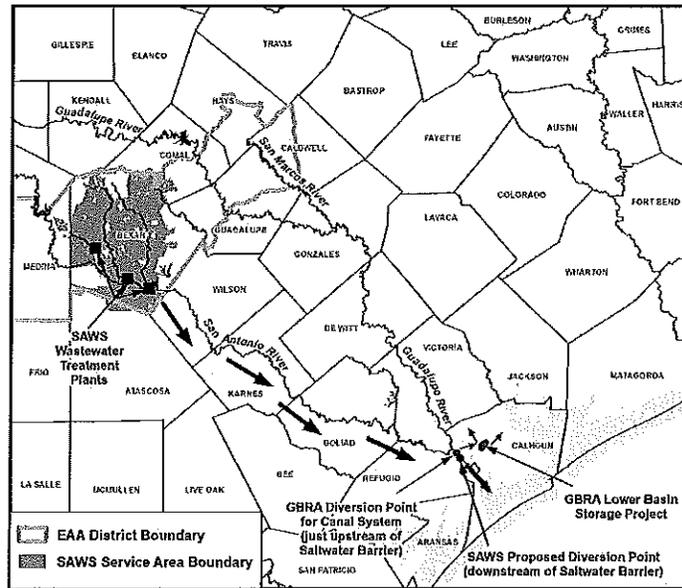
47. In its larger application, SAWS proposes to reuse *all* of its Edwards-derived effluent after it discharges the effluent to bodies of state-owned water. The reuse authorization SAWS seeks from the TCEQ is under general law, specifically Section 11.042(b) of the Texas Water Code, which provides as follows:

A person who wishes to discharge and then subsequently divert and reuse the person's existing return flows derived from privately owned groundwater must obtain prior authorization from the commission for the diversion and the reuse of

these return flows. The authorization may allow for the diversion and reuse by the discharger of existing return flows, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these return flows. Special conditions may also be provided to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to divert and reuse future increases of return flows derived from privately owned groundwater must obtain authorization to reuse increases in return flows before the increase.

48. Thus, the general law of Section 11.042(b) conflicts with the special restriction in the EAA Act relating to reuse of Edwards water. Under well-established rules of statutory construction, the specific law – applicable to “a unique and complex hydrologic system” and “a distinctive natural resource in this state” – controls over the general law. But resort to such rules is unnecessary because Section 1.08 of the EAA Act provides that “[t]his article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority’s jurisdiction.” (emphasis added).

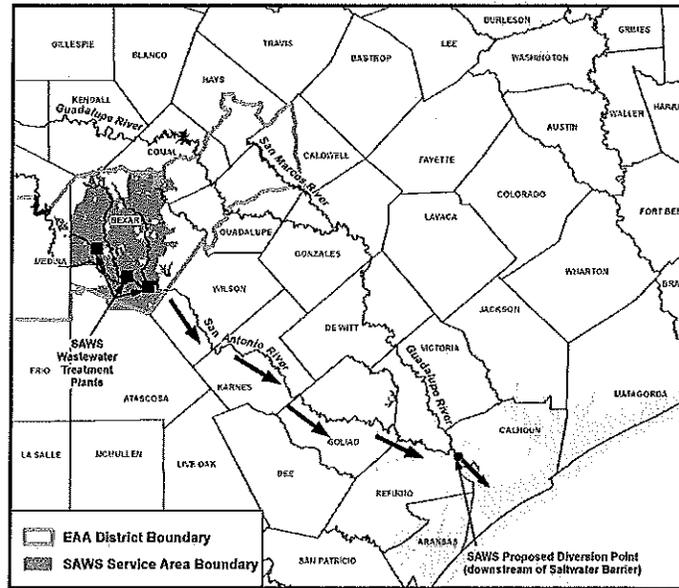
49. SAWS’s proposed reuse is prohibited because, as the figure reflects, the unconsumed Edwards water would not be reused “before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water, as required by Section 1.03(19) of the EAA Act. (emphasis added).



50. Thus, any use of Edwards-derived effluent after discharge may not be by general-law bed and banks reuse authorization. Instead, any such use must be authorized as use of state-owned water under a water right that is properly granted by the State pursuant to Chapter 11 of the Water Code and such use must be in accordance with that right's time priority relative to all other water rights.

51. In its larger application, SAWS also proposes to reuse its Edwards-derived effluent for municipal, agricultural, industrial and mining purposes and instream use in Wilson, Karnes, Goliad, Victoria, Refugio and Calhoun Counties.

52. As can be seen in the figure, no part of any of those counties lies within the boundaries of the EAA.



53. Thus, SAWS’s proposed reuse also is prohibited by the place-of-use restriction imposed by the EAA Act; section 1.34(a) mandates that “[w]ater withdrawn from the aquifer must be used within the boundaries of the authority.” (emphasis added).

54. If successful in its bed and banks applications, SAWS’s projected discharges of wastewater effluent would be eliminated from the GBRA-Dow Run-of-River Water Rights, and the firm supply available from the GBRA Canal System and the Lower Basin Storage Project would be gutted. The firm supply would amount to only roughly half of the 100,500 acre-feet per year based on the correct legal presumption that all discharges of Edwards-derived treated wastewater become, and remain, part of the state-owned run-of-river flows of the Guadalupe River system.

55. GBRA must have the right to divert discharges of Edwards-derived wastewater effluent as part of the state-owned run-of-river flow of the Guadalupe River system in order to produce a total firm supply of 100,500 acre-feet per year. The amount of firm water to be sold by GBRA and supplied to Participants pursuant to contracts is the difference between the projected firm supply of 100,500 acre-feet per year and the amount of firm water to be properly allocated to Dow pursuant to its interests in the GBRA-Dow Run-of-River Water Rights and contracts with

GBRA. SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over these contracts.

56. The rate per acre-foot of firm supply charged to Participants to recover the cost of the Lower Basin Storage Project and pay off the Bonds likewise will be based on the difference between the projected firm supply of 100,500 acre-feet per year and the amount of firm water to be properly allocated to Dow pursuant to its interests in the GBRA-Dow Run-of-River Water Rights and contracts with GBRA. SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over this rate.

57. More broadly, SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over (a) the pledge of "revenue, receipts, or property to secure the [Bonds]," TEX. GOV'T CODE § 1205.021(2)(F), (b) "the legality and validity of [the] public securities authorization" the Resolution for "off-channel reservoir storage . . . to provide a total firm water supply of not less than 100,000 acre-feet per year utilizing the GBRA-Dow Lower Basin Run-of-River Water Rights," TEX. GOV'T CODE § 1205.021(2); Resolution at 3; and (c) "the execution or proposed execution of . . . contract[s]" GBRA will enter into with municipal and industrial customers to supply defined amounts of water on a firm basis, certain revenues from which will be pledged to secure the Bonds, TEX. GOV'T CODE § 1205.021(2)(D).

G. SAWS's Cloud over Bonds issued and to be issued for Other Projects

58. GBRA has committed by contract its entire firm supply of water available from Canyon Reservoir, which is located on the Guadalupe River in Comal County.

59. The amount of firm supply of water that will be available from Canyon Reservoir in the future relies, in part, on discharges of Edwards-derived wastewater effluent to the extent those

discharges are needed for diversion under the GBRA-Dow Run-of-River Rights as part of the state-owned run-of-river flow of the Guadalupe River system.

60. If SAWS were successful in its bed and banks applications, some Guadalupe River inflows to Canyon Reservoir that would otherwise be stored in the Reservoir would need to be passed through the Reservoir to honor the more senior GBRA-Dow Run-of-River Rights, thereby reducing the already-fully-committed firm supply available from Canyon Reservoir.

61. SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over contracts that GBRA has entered into to secure the payment of such bonds, contracts that obligate GBRA to supply specific amounts of firm water from Canyon Reservoir.

62. The rate per acre-foot of firm supply charged to GBRA's customers to recover the costs of the Canyon Reservoir water projects and pay off such bonds is based in part on the amount of firm supply of water from Canyon Reservoir that GBRA has contracted for sale. SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over that rate.

63. Several years ago, GBRA filed applications with the TCEQ for significant new water rights for the unappropriated flows of the Guadalupe River for two proposed projects: a proposed water supply project with diversions from a river segment located just downstream of the confluence of the Guadalupe and San Marcos Rivers at Gonzales, and a proposed enhancement of the water supply for the GBRA Canal System. Both of those applications remain pending. If granted, the water rights would carry new priority dates. By its bed and banks applications, SAWS is attempting to bypass the priority system entirely. If SAWS were successful in its applications, GBRA would be prevented from diverting some Guadalupe River flows to which it would otherwise

be entitled under the applied-for water rights, thereby threatening the viability of those proposed projects and the bonds GBRA intends to issue to pay for the projects.

64. SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over contracts that GBRA proposes to enter into to secure the payment of such bonds for the two projects, contracts that would obligate GBRA to supply specific amounts of firm water from the two projects.

65. The rates per acre-foot of firm supply charged to GBRA's customers to recover the costs of the two proposed projects and pay off the bonds for those projects will be based in part on the amounts of firm supply of water from the projects that GBRA contracts for sale. SAWS's claim of right to file and pursue bed and banks applications under Section 11.042(b) of the Water Code for Edwards-derived discharges creates a cloud over those rates.

GBRA'S EXPEDITED DECLARATORY JUDGMENT CLAIM

66. As noted in the introduction above, the Expedited Declaratory Judgment Act provides public agencies with an efficient method of adjudicating the validity of public securities and related matters. GBRA has brought this action under the Expedited Declaratory Judgment Act in order to obtain a declaratory judgment:

(i) that GBRA is authorized to issue the Lower Basin Project Bonds; and that the Lower Basin Project Bonds, when issued and executed pursuant to the procedural requirements by law and the authorizing proceedings of GBRA, including approval by the Attorney General of Texas, constitute lawful and valid obligations and contracts of GBRA, enforceable according their respective terms, and that all provisions for the payment of, and pledges, liens, and security provided for such debt and the interest thereon constitute valid and binding obligations and contracts of GBRA under the laws of the State of Texas and that the Lower Basin Project Bonds have been confirmed and approved by this Court;

(ii) that each public security authorization relating to the Lower Basin Project Bonds is legal and valid, *see* TEX. GOV'T CODE § 1205.021(2), including without limitation the determination to construct "off-channel reservoir storage . . . to provide a total firm water supply of not less than 100,000 acre-feet per year utilizing the GBRA-Dow Lower Basin Run-of-River Water Rights";

(iii) that all treated wastewater derived from water withdrawn from the Edwards Aquifer, if discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water: (i) may not be reused pursuant to Section 11.042(b) of the Water Code or otherwise; and, therefore, (ii) is and shall remain state-owned water and part of the run-of-river flow of that watercourse to which state-issued water rights are entitled in the order of their respective priority dates.

(iv) that all treated wastewater derived from water withdrawn from the Edwards Aquifer, if lawfully reused (i.e., before it is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water), must be so used within the boundaries of the EAA.

(v) that the proposed expenditures of money relating to the Lower Basin Project Bonds are legal and valid;

(vi) that the Lower Basin Project Bonds themselves are legal and valid;

(vii) that, upon final approval by the Attorney General of Texas, the proceedings described herein made in connection with the issuance of the Lower Basin Project Bonds are valid and authorized by applicable laws; and

(viii) that GBRA may, in the future, make changes and amendments to the Lower Basin Project Bonds, as may be necessary or appropriate, so long as the changes are approved by the Attorney General of Texas.

ORDERS REQUIRED BY THE EXPEDITED DECLARATORY JUDGMENT ACT

67. GBRA respectfully prays that this Court follow the procedures set forth in the Expedited Declaratory Judgment Act and further prays:

(i) that the Court, upon presentation of this petition, immediately enter and issue the Order in the form and having the terms attached hereto as **Exhibit A**, in accordance with Sections 1205.041 and 1205.042 of the Expedited Declaratory Judgment Act, directed to all Interested Parties and the Attorney General of Texas;

(ii) that, prior to the date set for hearing and trial, the Clerk of this Court provide the required notice of this proceeding pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act and the additional notice requested by GBRA, by publishing a substantial copy of Order to be published in a newspaper of general circulation in Travis, Hays, Comal, Guadalupe, Caldwell, Gonzales, DeWitt, Victoria, Kendall, Refugio, Calhoun, Atascosa, Bexar, Medina, Uvalde, Wilson, Karnes, and Goliad counties, said notice to be so published once in each of two consecutive calendar weeks, with the date of the first publication to be not less than 14 days prior to the date set for the hearing and trial; and

(iii) that, pursuant to Section 1205.065 of the Expedited Declaratory Judgment Act, the Court "with the least possible delay" hear and determine each factual and legal question raised by this petition and render judgment.

PRAYER

For the reasons set forth above, GBRA respectfully prays that this Court, upon trial and final hearing, enter a declaratory judgment as set forth above in paragraph 66. GBRA further prays that the Court, upon trial and final hearing, award GBRA the following additional relief:

- (i) a decree, pursuant to Section 1205.151 of the Expedited Declaratory Judgment Act, that the declaratory judgment herein prayed for shall, as to all matters adjudicated, be forever binding and conclusive with respect to GBRA, the Attorney General of Texas, the Comptroller, and all Interested Parties, irrespective of whether such parties filed an answer or otherwise appeared herein;
- (ii) an order requiring all costs of GBRA and of any respective Interested Parties that intervene in this case to be taxed against GBRA and the respective Interested Party, except that the costs and expenses of the Attorney General of Texas shall be taxed against GBRA; and
- (iii) such other and further relief and orders to which GBRA may show itself justly entitled at law or in equity.

Respectfully submitted,

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