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**Bexar Metro. Water Dist. v. Texas Comm'n on Env'tl. Quality, No. 03-04-00574-CV, 2005 Tex. App. LEXIS 8743 (Tex. Ct. App. Oct. 20, 2005), vacated by 185 S.W.3d 546 (Tex. Ct. App. 2006)**

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Bexar Metro. Water Dist. v. Texas Comm'n on Env'tl. Quality, No. 03-04-00574-CV, 2005 Tex. App. LEXIS 8743 (Tex. Ct. App. Oct. 20, 2005), vacated by 185 S.W.3d 546 (Tex. Ct. App. 2006)

and abused its discretion by ordering the temporary injunction. The court held the temporary injunction void and remanded the case.

*Julie M. Schmidt*

**Bexar Metro. Water Dist. v. Texas Comm'n on Envtl. Quality, No. 03-04-00574-CV, 2005 Tex. App. LEXIS 8743 (Tex. Ct. App. Oct. 20, 2005), vacated by 185 S.W.3d 546 (Tex. Ct. App. 2006)** (holding that the Texas Commission on Environmental Quality had discretion to grant certification for water utility services where the city met certification requirements by contract and interlocal agreements).

The Court of Appeals of Texas, Third District, considered whether a municipality may meet the certification requirements of the Texas Commission on Environmental Quality ("Commission") and the Texas Water Code through contracting and interlocal agreements where the municipality does not have adequate capabilities on its own. The Commission granted certification to Bulverde, a new city north of San Antonio, based on a contractual arrangement to provide water services. Bexar Metropolitan Water District ("Bexar"), a legislatively created water conservation district that serves nearby regions, contested the Bulverde certification and applied to amend its own certification to include the Bulverde service area. The District Court of Travis County, 250th Judicial District, affirmed the Commission's grant of certification to Bulverde. Bexar appealed.

The court reviewed the Commission's grant by considering whether the record demonstrated a reasonable basis for the Commission's decision. First the court considered the Commission's statutory authority under Texas Water Code § 13.241, which states that "[i]n determining whether to grant a certificate . . . the commission shall ensure an applicant (i) possesses the financial, managerial, and technical capability to provide continuous and adequate service, (ii) is capable of providing drinking water that meets specified statutory requirements, and (iii) has access to an adequate supply of water." Looking at the plain language of the statute, the court held that § 13.241 allowed broad discretion to the Commission. Further, while the legislature required that the applicant "possess" the adequate capabilities to supply water, it did not require that the applicant "own" the facilities. The court affirmed both the Commission and the trial court's reasoning that the statute did not bar the municipality from contracting to acquire the requisite capabilities.

The court then considered the "continuous and adequate service" requirement for certification. Here, Bulverde's contractual relationship with Guadalupe-Blanco River Authority ("GBRA"), an experienced company which successfully operated five treatment plants and had access to a reliable water supply, coupled with Bulverde's adequate liquid assets, provided substantial evidence that this relationship could

supply “continuous and adequate service” to Bulverde residents. The court next considered whether the Commission had the authority to enforce regulations against GBRA, as a non-certificate holder. The court found that there were adequate safeguards, both legislative and contractual, for the Commission to hold GBRA accountable. Finally, the court examined the regionalization rule, § 13.241(d), which requires an applicant proposing a “physically separate” water system to demonstrate that it is not economically feasible to consolidate with another regional water facility. The court agreed with the Commission that the Bulverde system was not “physically separate,” and thus did not fall under the rule, because it was part of the “Western Canyon Project” operated by GBRA.

The court affirmed the trial court ruling and concluded that the Commission granted a certification to Bulverde, based on its contractual relationship with GBRA, in compliance with the Texas Water Code.

*Kathy Ott*

**Bexar Metro. Water Dist. v. Texas Comm’n on Evntl. Quality, 185 S.W.3d 546 (Tex. App. 2006)** (holding a municipality seeking a water service certificate under the Texas Water Code could demonstrate the statutory requirements through contracts and interlocal agreements with a river authority).

In 2000, the City of Bulverde (“City”), located in the growth corridor north of San Antonio, applied for a certificate to provide water utility service for its incorporated limits, extra-territorial jurisdiction and some outlying areas. The City contracted with Guadalupe-Blanco River Authority (“GBRA”) to construct, finance, operate and maintain a water distribution and treatment system using water from the Western Canyon Lake Treated Water Supply Project. Subsequently, Bexar Metropolitan Water District (“Bexar”) requested a hearing and amended its certificate to provide water service to an area overlapping the City’s requested service area.

At the hearing, the Administrative Law Judge (“ALJ”) evaluated the merits of the City’s application in light of the Commission’s permit requirements. Commission statutory requirements for applicants include: (1) possession of financial, managerial, and technical capacity to provide continuous and adequate service, (2) capability of providing drinking water meeting specified statutory requirements, and (3) access to an adequate supply of water. Ultimately, the ALJ recommended that the City’s application be denied, and Bexar’s approved in part. The Texas Commission of Environmental Quality (“Commission”), overruling the ADJ’s recommendation, granted the City’s request for a service certificate. The District Court of Travis County affirmed the Commission’s order.